

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

<hr/> <p>In re:</p> <p>MICHAEL K. HERRON,</p> <p style="text-align: center;">Debtor.</p> <p>-----</p> <p>MICHAEL K. HERRON,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>BANK OF AMERICA, N.A.</p> <p style="text-align: center;">Defendant.</p> <hr/>	<p>Adv. Proc. No. 20-02133-TPA</p> <p>Related to Bankr. No. 19-24527-TPA</p> <p>Chapter 11</p>
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AMENDED COMPLAINT TO DETERMINE SECURED STATUS

Michael K. Herron, through his undersigned counsel, hereby files this Amended Complaint to determine the secured status of creditor, Bank of America, N.A., as follows:

The Parties

1. Plaintiff, Michael K. Herron, is a natural person residing at 1276 West Tacoma Street in Hernando, Florida 34442-3237. The Plaintiff is also a debtor-in-possession in the referenced chapter 11 case.

2. Defendant, Bank of America, N.A., is a business entity organized and existing under Delaware law, which receives notices at PO Box 15312, Wilmington, DE 19850-5312. Moreover, the Defendant is an insured depository institution, which has appeared through its attorney with respect to the property at issue in this Amended Complaint, Thomas Song, Esquire, Phelan Hallinan Diamond & Jones, LLP, Omni William Penn Office Tower, 555 Grant Street, Suite 300, Pittsburgh, PA 15219.

Rule 7008 Statement

3. The Plaintiff consents to entry of final orders or judgment by the Bankruptcy Court.

Background

4. The Defendant financed the Plaintiff's real property located at 1132 SE Kings Bay Drive in Crystal River, Florida 34429 (the "*Collateral*"), securing repayment of its loan with the Collateral.

5. On November 21, 2019, the Plaintiff filed a voluntary bankruptcy petition under chapter 11 of the United States Bankruptcy Code.

6. According to the proof of claim that the Defendant filed in the referenced bankruptcy case, the Defendant has a secured claim of \$544,722.02. Claim No. 8. A copy of the Defendant's proof of claim is attached hereto as *Exhibit A*.

COUNT I: DETERMINATION OF SECURED STATUS

11 U.S.C. §§506(d) and 1123(b)(5)

7. The total amount of the Defendant's claim is \$544,722.02.

8. As reflected in the Debtor's schedules, the value of the Collateral is \$400,000.00. *Bankr. Doc. No. 91*. As further revealed in that entry, the reason for the decreased value is that the structure was destroyed in a hurricane and must be demolished.

9. Consequently, the Defendant's secured claim must be limited to \$400,000.00.

10. The Defendant is entitled to an unsecured claim in the amount of \$144,722.02. 11 U.S.C. §§ 506(d) and 1123(b)(5).

WHEREFORE, the Plaintiff respectfully requests that this Court enter an Order determining the secured status of the Defendant, substantially in the form attached hereto.

Dated: September 4, 2020

Respectfully submitted,

/s/ Aurelius Robleto
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